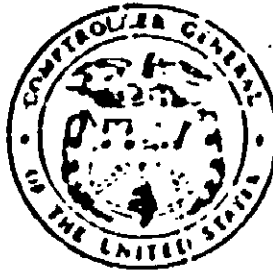


# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

119475

FILE: B-206429

DATE: September 20, 1982

MATTER OF: Blurton, Banks & Associates, Inc.

## DIGEST:

1. GAO has no basis to object to a procuring agency's determination that a protester's proposal was technically unacceptable where the protester fails to show that the determination was unreasonable or in violation of the evaluation criteria listed in the solicitation.
2. Where proposal deficiency is related to two different evaluation criteria, agency properly may penalize proposal in both evaluation categories.
3. A protest that certain solicitation provisions are restrictive is untimely under GAO's Bid Protest Procedures where the protest is filed after the closing date for receipt of proposals.
4. There is no legal basis to object to a contract award solely because the awardee did not submit the lowest-priced proposal, where the solicitation clearly advises that technical considerations are paramount to price.
5. The failure of the procuring agency to provide preaward notice of the technical unacceptability of the protester's proposal and the alleged failure of that agency to provide sufficient information in a post-award notice are procedural deficiencies that do not affect the validity of contract award.

Blurton, Banks & Associates, Inc., protests the award of a contract to J. T. Blankinship & Associates under request for proposals No. DACW43-81-R-0105 issued by the Army Corps of Engineers for surveying services. Blurton contends that the Army improperly evaluated that firm's technical proposal and that the solicitation was overly restrictive. Blurton also alleges that the Army violated several applicable procurement regulations.

The protest is denied in part and dismissed in part.

The solicitation requested proposals for a variety of surveying services. Section M of the solicitation set forth a list of evaluation criteria, in descending order of importance, as follows: experience, capacity, proximity to the project area, and price. Other provisions of the solicitation noted specific details related to those criteria that an offeror should include in its proposal.

The Army evaluated 24 proposals. Numerical rating of those proposals ranged from 89 points to 15 points out of a possible score of 100 points. Blurton, whose proposal was second low in price, received a numerical rating of 53 points. The Army established the competitive range at 75 to 89 points and entered into discussions with the three firms within that range. After contract award, the Army notified Blurton of the technical unacceptability of its proposal.

The Army considered Blurton's proposal to be technically unacceptable on several grounds. Blurton's proposal was adjudged defective in terms of experience because Blurton failed to submit resumes for key personnel below the management level and omitted details of specific work performed on previous similar contracts. Blurton's proposal also was deficient in terms of capacity, the Army asserts, because it neither identified the personnel that Blurton would commit to the project nor described sufficiently the hydrographic equipment to be used. Finally, the Army faulted Blurton's proposal because it indicated that Blurton's home office was not within a 200-mile limit of the project area.

Blurton disputes the Army's technical assessment of its proposal. The firm asserts that it did not submit resumes of its personnel below the management level because the solicitation did not require the submission of those resumes. Blurton also argues that the Army should not have deducted points in both the experience and capacity categories for the firm's failure to include those resumes or identify the makeup of its survey crews. In addition, the firm contends that it included with its proposal a list of

other similar contracts performed, contrary to the Army's assertions. Finally, Blurton believes it adequately described its hydrographic equipment.

It is not the practice of this Office to conduct independent technical evaluations of proposals. See Auto Paint Specialist, Inc., dba K & K Truck Painting, B-205513, June 21, 1982, 82-1 CPD 609. Thus, we will not make independent judgments of the numerical scores that should have been assigned to various proposals. See Westec Services, Inc., B-204871, March 19, 1982, 82-1 CPD 257. Rather, we limit our review to an examination of whether the evaluation was reasonable and in accordance with the listed evaluation criteria. See Media Works, Inc., B-204602.2, January 19, 1982, 61 Comp. Gen. \_\_\_, 82-1 CPD 42. In this respect, we emphasize that an evaluation is based upon the information contained in the proposal, so that no matter how capable an offeror may be, it runs the risk of losing the competition if its proposal does not include the information necessary to evaluate this capability. Blurton, Banks & Associates, Inc., B-205865, August 10, 1982, 82-2 CPD \_\_\_. With these factors in mind, we find that the Army's evaluation of Blurton's proposal was reasonable here.

Blurton's contention that the solicitation did not require offerors to submit resumes of personnel below the management level is incorrect. Section B of the solicitation required offerors to submit resumes of key personnel and stated that an offeror's mere assertion that the offeror would comply with the statement of work would be inadequate. Section C of the solicitation set forth a list of personnel, including surveyors, technicians and a boat operator, necessary for performance of the project. Blurton's proposal included only the resumes of what appear to be the firm's three top corporate officers, stating that it did not at that time have "firm plans for personnel below the management level" because the more desirable personnel would not be available until the start-up date. Blurton did not state the role these officers would assume in the performance of the contract and, beyond these named individuals, merely stated that it would have "no problem meeting the stated requirement for furnishing survey parties." In

view of the solicitation requirements, we believe the Army reasonably determined that Blurton failed to provide adequate information concerning the personnel the firm planned to commit to the project.

We also disagree with Blurton's assertion that it was improper for the Army to deduct points in both the experience and capacity categories due to the firm's failure to submit certain resumes and identify survey crews. The solicitation stated that proposals would be evaluated upon an offeror's ability to demonstrate its experience by showing the firm's technical knowledge of the stated minimum performance requirements. To demonstrate capacity, a firm's capability to field specific survey crews under expedited circumstances was to be evaluated. Clearly, Blurton's failure to even identify the firm's survey crews that would be committed to the performance of the contract reasonably related to both the experience and the capacity evaluation criteria. See Iroquois Research Institute, 55 Comp. Gen. 787 (1976), 76-1 CPD 123.

Likewise, the solicitation stated that offers would be evaluated on the basis of a firm's ability to furnish hydrographic survey equipment that met the minimum performance characteristics of certain brand name equipment. Blurton did state in its proposal that the firm would supply various pieces of equipment, but it did not specify the brand name or the specifications of the equipment it would supply. Thus, we are unable to fault the Army's determination that Blurton's proposal was deficient in this respect.

We note that Blurton did supply in its proposal the numbers of and references for other contracts the firm had performed or was performing. It appears that the Army determined that information to be inadequate. While Blurton challenges this determination, we note that the firm's proposal contained only a general recital of its prior performance for various other Corps districts and Government agencies. We conclude that the proposal could reasonably be deemed to lack the information necessary to demonstrate, for evaluation purposes, the level of experience Blurton asserts that it has. See Blurton, Banks & Associates, Inc., supra.

Blurton also argues that solicitation provisions setting forth brand names and requiring offerors to maintain a home office within 200 miles of the project are unduly restrictive. Our Bid Protest Procedures require that a protester file a protest based upon apparent improprieties in a solicitation prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(1)(1982). Since Blurton did not raise these issues until after the closing date for receipt of proposals, they are untimely and will not be considered. See Bernard Franklin Company, B-207587, June 4, 1982, 82-1 CPD 535.

Blurton asserts that the Army violated several applicable procurement regulations in conducting this procurement. First, it claims the Army disregarded Defense Acquisition Regulation (DAR) § 3-801.1 (DAC # 76-16), which provides that it is the policy of the Department of Defense, when competitively negotiating, to procure supplies and services from responsible sources at the lowest overall cost to the Government. Blurton implies that this regulation required the Army to accept Blurton's proposal, which was lower in price than that of the firm awarded the contract.

The statute underlying the cited DAR provision expressly authorizes consideration of factors other than price in making award under a competitively negotiated procurement. 10 U.S.C. § 2304(g) (1976). This authorization recognizes the need, under certain circumstances, to subordinate price to technical considerations. Thus, where, as here, an agency considers technical factors more important than price and the solicitation clearly advises offerors of this fact, there is no basis for objecting to an award solely because the awardee did not submit the lowest-priced proposal. See Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263.

Blurton also claims that the Army failed to give preaward notice of the technical unacceptability of its proposal as required by DAR §§ 3-508.2(a) and (b) (DAC # 76-28), and that the Army violated DAR § 3-503.3 (1976 ed.) by providing insufficient information in its post-award notice. That the Army failed to give preaward notice or may have provided insufficient information in the post-award notice are procedural deficiencies that will not affect the validity

of the contract award. See Bow Industries, Inc., B-196667, March 25, 1980, 80-1 CPD 219; see also Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 C PD 49. The Army's failure to give Blurton preaward notice obviously did not prejudice its rights in filing a protest with this Office since we have concluded that the Army's technical evaluation of Blurton's proposal was reasonable.

The protest is denied in part and dismissed in part.

*Harvey D. Van Cleave*  
Comptroller General  
of the United States